

**NORTH CAROLINA**  
**STATE FULL FUNDING GRANT AGREEMENT**

**BETWEEN**  
**CITY OF CHARLOTTE**  
**AND**  
**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

**For the**  
**LYNX BLUE LINE EXTENSION NORTHEAST CORRIDOR LIGHT RAIL PROJECT**  
**STATE OF NORTH CAROLINA**  
**DEPARTMENT OF TRANSPORTATION**

## STATE FULL FUNDING GRANT AGREEMENT

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## STATE FULL FUNDING GRANT AGREEMENT

THIS NORTH CAROLINA DEPARTMENT OF TRANSPORTATION GRANT AGREEMENT (Agreement) is entered into by the City of Charlotte (Grantee) and the State of North Carolina (State), acting through the Department of Transportation (Department).

**WHEREAS**, pursuant to N.C. Gen. Stat. §136-44.20, the Department is authorized to enter into State Full Funding Grant Agreements to commit the State financial assistance to the public transportation project described herein (the Project, as hereinafter defined) subject to appropriations by the North Carolina General Assembly, and to establish the terms and conditions of such financial assistance;

**WHEREAS**, the Department has previously provided State matching funds to Federal New Starts grants for the undertaking of the Preliminary Engineering and Environmental Impact Statement (PE/EIS) phase of this Project, which was necessary to progress the Project through the Federal New Starts planning and PE/EIS documentation processes;

**WHEREAS**, the Grantee has submitted in its request for State assistance (the Application), certifications of the Grantee's intent to submit all assurances, certifications and all other documents required as conditions precedent to a grant of Federal financial assistance, and intent to abide by all assurances, certifications, laws and regulations necessary to secure Federal New Starts funding for the Project;

**WHEREAS**, the Department finds that the Grantee demonstrates financial, organizational, legal and technical capacity as is necessary to Complete the Project (as that term is hereinafter defined) within the level of State assistance set forth in this Agreement, subject to the anticipated commitment of Federal funds; and

**WHEREAS**, the Grantee has notified the Department that it has completed the required environmental documentation and has received a Record of Decision from the Federal Transit Administration (FTA) for the Project.

**THEREFORE**, in consideration of the above and the parties' mutual promises as set forth in this State Full Funding Grant Agreement (SFFGA), the Grantee and the Department agree to the specific terms, conditions and provisions set forth in this entire Agreement, including, in particular, the specific terms of the following Articles and Attachments:

## **Article 1        Purpose of Agreement**

The purpose of this Agreement is:

- (A) to describe the Project and to set forth the mutual understandings, terms, conditions, rights and obligations of the parties related to carrying out the Project, the future management and operation of the Project and the manner in which the Project real property and equipment will be used, consistent with all applicable laws, regulations and New Starts requirements;
- (B) to establish the Maximum State Financial Contribution (as that term is hereinafter defined) in the Project, and to establish the manner in which all future state funds for the Project, if any, will be awarded and released to the Grantee;
- (C) to establish the Grantee's financial commitment to the Project including its obligation to fund its portion of the non-federal Share, its obligation to Complete the Project with a specified amount of Federal and State assistance, its obligation to achieve revenue operation of the Project by a specified date, its obligation to pay all costs necessary to Complete the Project that are in excess of the Estimated Project Cost of the Project (as that term is hereinafter defined), and its obligation to finance the future maintenance and operational costs of the Project; and
- (D) to facilitate timely and efficient management of the Project.

## **Article 2        Definitions & Interpretations**

- (A) Definitions:

Actual Project Costs means those costs that are the actual, audited costs incurred for all the work necessary to Complete the Project and eligible for State financial participation.

Agreement means this State Full Funding Grant Agreement (SFFGA) and consists of all parts and documents listed in the Table of Contents, the additional documents listed in the "Contents of Agreement," Article 24 of this Agreement, and will include all future addenda, substitutions, modifications and amendments as and when legally executed and effective.

Application means those documents and written submissions filed by or on behalf of the Grantee pursuant to its request for state financial assistance for support of the Project and accepted by the Department as satisfaction of the legal and policy requirements of Grant award. The Application includes all explanatory, supporting, or supplementary documents related to the Project supplied by the Grantee to the Department in support of its request for State financial assistance for the Project. The contents of the Application are described in more detail in Article 4, "The Application."

Baseline Cost Estimate (BCE) means the document described in Article 5 of this Agreement and set forth in Attachment 1. The BCE was established at the FTA issuance of a Record of Decision for the Project. It is a record of the initial cost estimate included in the Application.

Baseline Schedule means the document described in Article 6 of this Agreement and set forth in Attachment 2. The Baseline Schedule was established at the the FTA issuance of a Record of Decision for the Project. It is a record of the initial schedule included in the Application.

BLE means the LYNX Blue Line Extension Northeast Corridor Light Rail Project

Complete the Project means to accomplish all of the scope and activities of the Project as described in Article 3, “Project Scope and Description.”

Date of this Agreement means the date this SFFGA is executed by all parties.

Days mean calendar days unless otherwise stated. By written agreement the Department and the Grantee may extend or modify any period of days set forth in this Agreement.

Department means the North Carolina Department of Transportation.

Environmental Impact Statement (EIS) means the FTA-required statements that provide full and open evaluation of environmental issues and alternatives, and inform decision-makers and the public of reasonable alternatives that could avoid or minimize adverse impacts and enhance the quality of the environment.

Estimated Project Cost means the total budgeted cost of the BLE as of the execution of this Agreement, including amounts budgeted for contingencies, and any subsequent amendments agreed to jointly by the Department and the Grantee and that are included in the “Project Budget – Costs and Sources of Funding of the Project” as set forth in Article 7 of this Agreement. The amount will initially be established at the FTA issuance of a Record of Decision for the Project. It may be subsequently amended, as provided in this Agreement.

Estimated Project Sources of Funding means the total budgeted sources of funding of the BLE as of the execution of this Agreement, including amounts budgeted for contingencies, and any subsequent amendments agreed to jointly by the Department and the Grantee and that are included in the “Project Budget – Costs and Sources of Funding of the Project” as set forth in Article 7 of this Agreement. The amount will initially be established at the FTA issuance of a Record of Decision for the Project. It may be subsequently amended, as provided in this Agreement.

Federal Full Funding Grant Agreement (Federal FFGA) means the agreement to be executed between the FTA and Grantee that will commit the Federal financial assistance necessary to Complete the Project.

Federal Transit Administration (FTA) means the transit administrative agency of the United States Department of Transportation.

Financial Records are defined as any and all original documents which are used under OMB Circulars A-87 and A-133, as those documents may be amended from time to time, to support federal grant costs and other costs that the Department and Grantee agree are necessary to complete the Project. This definition includes all federal guideline and financial documents submitted by staff, consultants and sub-consultants working on the Project.

Final Design means the last phase of the New Starts project development during which the project sponsor prepares for construction. This includes the preparation of final construction plans and detailed specifications for the performance of construction work.

Final Environmental Impact Statement (FEIS) means the written documents that include: 1) identification of a preferred alternative; 2) responses to comments made during the circulation period; 3) commitments to mitigate adverse impacts of the Project; 4) evidence of compliance with related environmental statutes, Executive Orders and regulations; and 5) a description of changes that have been made to the Project since the draft EIS was published. The FEIS is created after completion of the circulation period.

Financial Plan means the plan accepted by the Department as part of the Application process, as may be amended by joint agreement between the Department and the Grantee, describing the Grantee's financial condition and capability to Complete the Project and to maintain and operate the Project together with the Grantee's existing transit system. It includes all explanatory, supporting and supplementary documents, commitments, and agreements accepted or approved by the Department.

Grant means the obligation and award of state financial assistance by the Department pursuant to the laws of North Carolina.

Grantee means the City of Charlotte

Joint Legislative Transportation Oversight Committee of the North Carolina General Assembly means the committee that including but not limited to: reviews transportation related reports prepared by the Department, when those reports are required by any law; monitors the funds deposited in and expenditures from the North Carolina Highway Trust Fund, the Highway Fund, the General Fund, or any other related fund; and determine whether transportation related funds are being spent in accordance with law.

Locally Preferred Alternative means the alignment and stations location, the operating plans for the transit service, and any design options to be further evaluated during the next phases, Preliminary Engineering and Final Design.

North Carolina Board of Transportation means the group of nineteen (19) people from across the state in which each member represents a specific transportation division or at-large area of interest and works with Department staff members to make decisions about transportation priorities, including execution of this Agreement.

Maximum Federal Funds Approved means the amount of federal funds obligated and available to the Grantee to be defined in the executed Federal FFGA.

Maximum State Financial Contribution means the amount of State financial participation in the Project. The amount of the Maximum State Financial Contribution is set forth in Article 9, "Maximum State Financial Contribution and Limitations". The amount will initially be established at the FTA issuance of a Record of Decision for the Project. Included in the State contribution are any State funds already obligated for Project work normally considered part of the PE/EIS phase, Final Design or Construction phases of the Project.

Metropolitan Transit Commission (MTC) means the policy board for the CATS, which has the responsibility for reviewing and recommending all long-range public transportation plans. The MTC reviews CATS' operating and capital programs, and makes recommendations to the affected governments for their approval and funding of those programs. The MTC is a public body, and in addition to holding monthly public meetings, it conducts public involvement programs designed to gain community input on transit planning.

Preliminary Engineering (PE) means is the analysis and design work to produce construction plans, specifications and cost estimates. It also includes track alignment, station locations, engineering surveys, traffic analysis, development of a finance plan, confirmation of local funding commitments and refining construction schedules and costs. This is usually thirty percent (30%) to sixty-five percent (65%) completion of design.

Project means the transit/transportation improvements that the Grantee sets forth to complete as described in Article 3, “Project Scope and Description,” and as further described in the Grantee’s Final Environmental Impact Statement (FEIS) and in the FTA Record of Decision which are the bases for federal participation.

Project Budget – Costs and Sources of Funding means the total budgeted cost of the BLE and the anticipated sources of funding for the Project as of the execution of this Agreement, including amounts budgeted for contingencies, and any subsequent amendments agreed to jointly by the Department and the Grantee. The “Project Budget – Costs and Sources of Funding of the Project” is set forth in Article 7 of this Agreement. The Project Budget will initially be established at the FTA’s issuance of a Record of Decision for the Project. It may be subsequently amended, as provided in this Agreement.

Project Schedule means the document described in Article 8 of this Agreement and set forth in Attachment 4. The Project Schedule was established at the the FTA issuance of a Record of Decision for the Project. The Project Schedule may be amended, as provided in this Agreement.

Project Costs means all costs eligible for State financial participation under the terms of this Agreement and to be consistent with the cost principles which will be set forth in the Federal FFGA.

Record of Decision means a determination by the federal government that the Project has complied with applicable laws and regulations in conducting the NEPA (National Environmental Policy Act of 1969) environmental review process, and is a legally binding document that represents a formal administrative action to advance the Project toward implementation.

Revenue Operation Date means the date certain upon which the Grantee shall commence revenue operations of the Project as described in Article 15.

Sponsor’s Local Share means that portion of the Grantee’s local financial commitment that is the Grantee’s required share of the Project Cost, including the value of right of way or property acquired, or infrastructure funded by the Grantee, agreed as necessary by the Department for the Project, and contributed to the Project.

University of North Carolina at Charlotte (UNC Charlotte) means the public, State-owned University located in Charlotte, NC.

(B) Interpretations

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(1) All references in this Agreement to designated Articles, Attachments or other subdivisions are to the designated Articles, Attachments and other subdivisions of this Agreement as originally executed and as subsequently amended. The words “hereof”, “hereunder”, “herewith” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Attachment or other subdivision hereof.

(2) The terms defined in Article 2 have the meanings assigned to them in this Article and include the plural as well as the singular.

(3) The headings and captions used in this Agreement are for convenience of reference only and shall not define, limit or describe any of the provisions hereof or the scope or intent hereof.

### **Article 3        Project Scope and Description**

The BLE is located within the City of Charlotte and Mecklenburg County, North Carolina. The Northeast Corridor is bounded by Cabarrus County to the North, Interstate-85 to the west and Center City Charlotte to the south.

The Metropolitan Transit Commission (MTC) is the policy board for CATS. The Grantee appropriates and disburses CATS' funds, awards contracts, applies for and receives Federal and State grants and provides administrative funds. A Locally Preferred Alternative (LPA) was initially approved at the conclusion of the Northeast Corridor Major Investment Study in 2002. In 2006, the MTC selected the light rail alternative as the LPA to be advanced in Preliminary Engineering. The FTA approved the BLE into Preliminary Engineering in November 2007. The LPA was amended in January 2011, following the completion of the draft Environmental Impact Statement. The FEIS was completed in October 2011 and FTA issued the Record of Decision in December 2011.

The BLE consists of a 9.4 mile light rail transit line that extends from the current LYNX Blue Line in Center City Charlotte, the region's central business district, northeast to the campus of the University of North Carolina at Charlotte (UNC Charlotte). The inner segment of the proposed line follows active railroad rights-of-way while the outer segment follows US-29 (North Tryon Street) until it enters the campus of UNC Charlotte. Peak period light rail service along the BLE would initially operate at 7.5 minute frequencies.

The Project includes property acquisition, grade separations, street modifications, utility relocations, trackwork, a vehicle storage yard and dispatch facility, park-and-ride surface lots/decks, bus drop-off areas, and bicycle and pedestrian accommodations. Other scope elements include the procurement of light rail vehicles, fare collection equipment, train control software and equipment, communications equipment, signage, start-up equipment and testing of the Project for revenue operation.

The BLE includes eleven (11) stations. Four (4) of the light rail stations will have park-and-ride lots and/or parking decks with accessible parking for handicapped patrons and bus bays to facilitate transfers between the light rail and the CATS bus system. Park-and-ride facilities would vary in size based on projected ridership and available land. The parking decks may accommodate retail space which could be a future source of operating revenue for CATS. Access to the other seven (7) stations without parking will primarily consist of pedestrian, bicycle and bus access.

The BLE will utilize a light rail vehicle compatible with the existing fleet. The light rail vehicles will consist of the partial seventy-five percent (75%) low floor type and will be articulated. Cars will be capable of multiple unit bi-directional operation. The light rail vehicles will be fully compliant with the Americans with Disabilities Act (ADA).

In addition to the Project scope information in this Article, Attachment 6, "Project Description & Project Map", provides further detail of the Project scope.

### **Article 4        The Application**

The formal request for a prospective Grantee to enter into a SFFGA with the Department for its Project is the Application. The Application includes documents and written materials that describe the Project to be accomplished, the anticipated schedule, the anticipated Project Budget – Costs and Sources of Funding, environmental issues and other explanatory, supporting or supplementary documents related to the



Project. The Application contents are intended to be consistent with similar documents prepared for the FTA by the Grantee, to the extent possible.

The Application includes, but is not limited to, the following documents or materials:

1. Written request for a SFFGA from the Grantee's governing body;
2. Baseline Cost Estimate following the format provided to the FTA;
3. Baseline Schedule following the format provided to the FTA;
4. Project Budget – Costs and Sources of Funding following the format provided to the FTA, including actual amounts (\$) and percentages) of financial partner shares;
5. Copy of the FTA's Record Of Decision for the Project;
6. Copy of the FEIS for the Project;
7. Grantee's Financial Plan following a format acceptable to the FTA for the Project;
8. Grantee's Certification that it intends to submit all assurances, certifications and all other documents required as conditions precedent to a grant of Federal financial assistance;
9. Grantee's Certification that it has the financial, organizational, legal and technical capacity to Complete the Project;
10. Copy of the latest and most complete engineering document(s) produced in the Preliminary Engineering phase of the Project;
11. Copy of Blue Line Extension Project Management Plan; and
12. Other documents, written materials such as the Grantee may feel are significant in identifying and describing the Project or as the Department may require to understand, identify or describe the Project.

#### **Article 5      Baseline Cost Estimate (BCE)**

(A) In its application, the Grantee submitted to the Department a BCE for the activities comprising the Project. The BCE is in Attachment 1 of this Agreement. It is derived from cost estimates of the individual contracts that, in sum, comprise the Project. The BCE is a record of the initial cost estimate of the Project and includes an appropriate escalation factor.

(B) As a record of the original cost estimate as of the Date of this Agreement, the BCE included in Attachment 1 is the preliminary BCE and will be amended to reflect the BCE included in the Federal FFGA. Once the final BCE is defined, it will not be amended or modified. Changes to the Project Costs, to which the Grantee and the Department both agree, will be included in the Project Budget – Costs and Sources of Funding, as described in Article 7.

#### **Article 6      Baseline Schedule**

(A) In its Application, the Grantee submitted a Baseline Schedule for the Project that demonstrates the timing of when the Grantee intends to implement the Project and achieve the Revenue Operation Date. The Baseline Schedule is in Attachment 2 of this Agreement.

(B) The Baseline Schedule is a record of the initial schedule for the Project and will be amended to reflect the Federal FFGA. Once the final Baseline Schedule is defined, it will not be amended or modified. Changes to the Project Schedule, to which the Grantee and the Department both agree, will be included in the Project Schedule, as described in Article 8.

#### **Article 7      Project Budget – Costs & Sources of Funding**

(A) The Project Budget – Costs and Sources of Funding was established at the FTA issuance of a Record of Decision for the Project. It includes a detailed listing of the estimated costs of the Project, known as the Estimated Projects Costs, including amounts budgeted for contingencies. It includes a detailed listing of the estimated sources of funding for the Project Costs, known as the Estimated Project Sources of Funding. The Project Budget – Costs and Sources of Funding is incorporated into this Agreement as Attachment 3, “Project Budget – Costs and Sources of Funding.” The Project Budget – Costs and Sources of Funding may be amended upon the execution of the Federal FFGA and then may also be amended subsequently under the following conditions: 1) increases to the Project Costs approved by the FTA as eligible for FTA grant funding, or 2) increases to the Project Costs which may not be eligible for FTA grants but which the Department and Grantee jointly agree are necessary for the completion of the Project, or 3) in other cases that the Department and the Grantee agree necessitate amendment(s) to this Agreement subject to review by the Joint Legislative Transportation Oversight Committee.

(B) This Agreement is to assist in the payment of Actual Project Costs. If the funds identified under this Agreement exceed the amount necessary to fund the State share of the Actual Project Costs, the excess funds are not available to the Grantee for payment of costs beyond the scope of this Agreement.

(C) Any refund or reduction of the Grantee's local share of the Actual Project Costs shall require a refund to the Department of a proportional amount of the State financial assistance provided under this Agreement, provided this reduction was for Project Costs originally identified for State participation.

(D) The portion of Actual Project Costs that may be financed by the Department may not exceed the amount of the Maximum State Financial Contribution in this Project as stated in Article 9 of this Agreement, “Maximum State Financial Contribution and Limitations”, as such amount is originally stated or as amended pursuant to Article 9, Item (E)(1).

## **Article 8 Project Schedule**

The Project Schedule was established at the FTA issuance of a Record of Decision for the Project. It includes a detailed listing of the steps in the Project and estimated dates for their completion. The Project Schedule is incorporated into this Agreement as Attachment 4, Project Schedule. The Project Schedule may be amended upon the execution of the Federal FFGA and then may be amended subsequently under the following conditions: 1) changes in the Project Schedule agreed to by FTA and 2) changes in the Project Schedule agreed to by the Department as necessary or beyond the control of the Grantee or 3) in other cases that the Department and the Grantee agree necessitate amendment(s) to this Agreement subject to review by the Joint Legislative Transportation Oversight Committee.

## **Article 9 Maximum State Financial Contribution & Limitations**

(A) The Department's determination to provide financial assistance for the Project is based, in significant part, upon the Grantee's estimated costs as set forth in the BCE, Attachment 1, of this Agreement.

(B) The Estimated Project Costs financed with the execution of this Agreement is limited by the amount of the Maximum State Financial Contribution, including amendments, if any. The amount of State participation is limited to the Maximum State Financial Contribution.

(C) The sources of State financial assistance for the Project are set forth in the Project Budget – Costs and Sources of Funding. By the execution of this Agreement, in its present form, the Department is not

incurring any obligation (other than to seek appropriations as described in Article 32) regarding the award of State funds for the Project.

(D) The State financial assistance also includes those State funds already obligated for Project work normally considered part of the PE/EIS, Final Design, Right of Way Acquisition or Construction phases of a project. Prior Grants of State assistance awarded by the Department for this Project for those activities are described in the Project Budget – Costs and Sources of Funding.

(E)

(1) With the execution of this Agreement, the Department acknowledges its intent to provide State assistance for the Project in the amount of \$267,222,000 (Two Hundred Sixty-Seven Million, Two Hundred Twenty-Two Thousand Dollars). This assistance shall be in the form of cash in the amount \$267,222,000 (Two Hundred Sixty-Seven Million, Two Hundred Twenty-Two Thousand Dollars). The amount included here is the Maximum State Financial Contribution established at FTA issuance of a Record of Decision for the Project. This amount is intended to equal one half (1/2) of the non-Federal share of the Project Cost, with an expected total Project Cost share to the Department of twenty-five percent (25%). Notwithstanding the above, individual scopes and/or activities in Attachment 3, the Project Budget – Cost and Sources of Funding, may be funded by the State at percentages or shares different than established for the entire Project Costs so long as the Maximum State Financial Contribution does not exceed twenty-five percent (25%) of the Project Costs and the amount identified in this part of Article 9.

(2) The Maximum State Financial Contribution will be amended upon execution of the Federal FFGA and then may also be amended under the following conditions: 1) increases to the Project Costs approved by the FTA as eligible for FTA grant funding, 2) increases to the Project Costs which may not be eligible for FTA grants but which the Department and Grantee jointly agree are necessary to Complete the Project, or 3) in other cases that the Department and the Grantee agree are necessary to Complete the Project subject to review by the Joint Legislative Transportation Oversight Committee of the North Carolina General Assembly. The guidelines the Department will follow to determine the State share of cost increases are described in Attachment 7, State Share of Federal New Starts Costs. The anticipated sources of State financial assistance in this amount are listed in Attachment 3 of this Agreement, Project Budget – Costs and Sources of Funding. All State funds obligated pursuant to this Paragraph will be subject to all the terms, conditions and obligations set forth in this Agreement. Accordingly it is expected that the award of additional funds will be recognized by amendments to this Agreement, and will be awarded pursuant to the Grant Contracts described in Article 28, “Provisions Pertaining to Grant Contracts.”

(3) If the actual, audited amount of the total costs of the Project are less than the total Estimated Project Costs in this Agreement, as amended, the State share shall be proportionately less so that the State share does not exceed fifty percent (50%) of the non-Federal share of the actual, audited costs of the Project

(4) The award by the Department of additional State financial assistance to the Project under this Article is subject to the following limitations:

- (a) the availability of appropriated funds; and
- (b) the Grantee's continued performance under the terms and conditions of this Agreement.

(F) It is recognized by the parties to this Agreement that State resources may be utilized to comprise a portion of the Maximum State Financial Contribution. The value of these resources shall be mutually agreed to between the Department and the Grantee. Any additional amounts of State assistance may also be comprised of State resources. Utilization of State resources to comprise a portion of the Maximum State Financial Contribution or additional amounts of State assistance shall be recognized by amendments to this Agreement. However, the parties mutually agree that this provision shall not apply to the property interests and associated rights and privileges held by the State of North Carolina and located on the campus of UNC Charlotte that will be conveyed to the Grantee in support of the Project. The value of such interests located upon the campus of UNC Charlotte, shall not be utilized to comprise any portion of the Maximum State Financial Contribution.

(G) In addition, the parties mutually agree that the Department's project costs for the design and construction of the Heavy Rail Bridge and Track component of the 36<sup>th</sup> Street Grade Separation Project shall not be utilized to comprise any portion of the Maximum State Financial Contribution.

(H) It is recognized by the parties to this Agreement that work outside of the scope of the Federal FFGA added to the Project at the request of either party, and considered a betterment by FTA shall be the sole financial responsibility of the requesting party and shall be covered by a separate agreement.

#### **Article 10 Non-State Local Financial Commitment – Capital Costs**

(A) As a condition of the Department's execution of this Agreement, the Grantee has developed and adopted a Financial Plan for financing all Project Costs necessary to Complete the Project. In addition to the amount of State funds requested, the Financial Plan and the Project Budget – Costs and Sources of Funding include a statement of the non-State local and private sources of funding and the amount of funds available for and committed to the Project from each such source. It also includes the amount of Federal funds reasonably anticipated to be available for the Project. This Financial Plan, as accepted by the Department, with the supporting documentation (including formal funding agreements and commitments) is an essential element of the Grantee's Application and is hereby incorporated by reference and made a part of this Agreement. Upon execution of a Federal FFGA for the Project, the Financial Plan for this Agreement will be revised to be in agreement with the Financial Plan established as the basis for the Federal FFGA.

(B) The Grantee hereby commits and certifies that it will provide funds in an amount sufficient, together with the State and Federal contributions (acknowledging the limitations as set forth in this Agreement), to assure timely and full payment of the Project Costs necessary to Complete the Project.

(C) The Grantee hereby commits and certifies that the Grantee's Local Share portion of its financing commitment will be provided from funding sources other than: 1) Federal funds (except as may otherwise be authorized by Federal statute), 2) State funds (except as may otherwise be authorized by State statute), and 3) other State resources as described in Article 9, "Maximum State Financial Contribution and Limitations."

(D) Based on the Project Budget – Costs and Sources of Funding of the Project, as set forth in Article 7 of this Agreement, the Grantee's financial commitment to the Project Cost is estimated to be \$267,222,000 (Two Hundred Sixty-Seven Million, Two Hundred Twenty-Two Thousand Dollars). This amount constitutes the Grantee's Local Share needed to match the anticipated Maximum Federal Funds Approved and the Maximum State Financial Contribution to the Project. In the event that the actual State contribution in the Project is reduced or is increased or the funding percentage as set forth in the notification of Grant Award is changed, the portion of the Grantee's financial contribution to the Project that is identified as Grantee's Local Share shall be adjusted accordingly.

(E) The Grantee agrees to notify the Department of any change in circumstances or commitments which adversely affects the Grantee's plan to fund the Project Costs necessary to Complete the Project as set forth in the Financial Plan. In its notification, the Grantee shall advise the Department of what actions it has taken or plans to take to ensure adequate funding resources and shall reaffirm its commitment to the Department as set forth in paragraph (B) of this Article.

#### **Article 11 Local Financial Commitment – Operating & Maintenance Cost**

(A) As a condition of the Department's execution of this Agreement, the Grantee has developed and adopted a Financial Plan for financing the future operation and maintenance of the Project that also takes into consideration the Grantee's continuing financial responsibilities to operate, maintain and reinvest in its existing transit system. This Financial Plan, as accepted by the Department, and the supporting documentation (including specific funding commitments) evidencing stable and dependable funding sources is an essential part of the Grantee's Application and is made a part of this Agreement by incorporation and attachment of the Application.

(B) With the execution of this Agreement, the Grantee assures that it has stable and dependable funding sources, sufficient in amount and in degree of commitment, to operate and maintain its entire public transit system at an adequate and efficient level of service. The foregoing assurance does not preclude the Grantee from altering service through contracts with private providers of public transportation services.

(C) The Grantee will notify the Department of any change in circumstances or commitments that adversely affects the Grantee's plan to fund the maintenance and operating costs of the Project as set forth in the Financial Plan. In its notification, the Grantee will advise the Department of actions it has taken or plans to take to ensure adequate funding resources and will reaffirm to the Department its assurance as set forth in paragraph (B) of this Article.

#### **Article 12 Amendment & Assignment**

(A) Amendment(s). The Department and the Grantee agree that the initial SFFGA will be amended upon execution of the Federal FFGA and may also be amended for changes to the Project Budget or Project Schedule under conditions described in Articles 7 and 8. This Agreement may be amended in writing by both parties, subject to review by the Joint Legislative Transportation Oversight Committee.

(B) Assignment. This Agreement is binding upon both the Department and Grantee. The rights, duties, and obligations of either party with respect to the Project may not be assigned without the written consent of the other party. It is understood, however, that Grantee will retain consultant/contractors to perform the Project work.

#### **Article 13 Responsibilities**

(A) Project Responsibilities

(1) SFFGA Responsibilities. Grantee shall exercise management and technical oversight of the Project, including the development of a Financial Plan as required to secure a Federal FFGA and comply with the requirements thereof. The Financial Plan shall incorporate the State financial assistance and cash flows, provided or to be provided, subject to appropriation by the General Assembly, for the Project pursuant to this Agreement. Grantee shall submit the Financial Plan to the Department for review

and approval, and the Department shall fully support Grantee in its efforts to obtain a Federal FFGA for the Project.

(2) **Project Work Responsibilities.** Grantee, using staff, consultants and contractors shall undertake all Project work associated with the Project, said work being designed, consistent with all Federal law, regulations and New Starts requirements to put the Project into revenue service operation. Grantee shall submit copies of all Project work plans, specifications, cost estimates and all other critical documentation to the Department as they are completed. The Department shall timely review Project work plans and specifications to ensure compatibility with other identified transportation modes and purposes. From time to time the need may arise for work to be performed by the Department or its designees to be reimbursed by Grantee. The Department and Grantee shall enter into a separate agreement regarding such work and reimbursement.

(3) **Compliance with Laws/Participation in Safety and Other Improvement Initiatives.** Grantee shall comply with all applicable Federal or State law, rules, regulations and orders as the same may apply to the Grantee and the Project. Grantee shall commit to work with Department in its efforts to make transportation improvements related to the Project that address safety needs of the public and employees of Grantee, including but not limited to at-grade rail crossing consolidation projects. The Department shall fully support Grantee in its compliance efforts and shall comply with all applicable Federal or State laws, rules, regulation and orders as the same may apply to the Department.

(4) **Timeliness of Submissions and Approvals.** The Grantee shall make all submissions to the Department, as provided in this Article, in a manner that provides the Department adequate time to review such submission as the situation warrants. The Department shall not unreasonably delay or withhold any right of approval provided for in this Article.

**(B) Funding Responsibilities – Project Costs Responsibilities**

(1) As hereinafter limited, the Department shall be responsible for the State share of all Project Costs identified in the Estimated Project Costs portion of the Project Budget – Costs and Sources of Funding and the Maximum State Financial Contribution, as amended. The Department will consider, subject to funds being appropriated by the North Carolina General Assembly and cash availability from the Department, making quarterly advance payments for the entire State share or portions of the State share of the aforementioned Project Costs, as described in the Grant Contract(s) entered into by the Grantee for this Project. The Department's Project costs responsibilities shall be conditioned upon receipt of quarterly accountings of the Grantee's Actual Project Costs compared to the anticipated expenditures for the past quarter. Such reports shall be made in such form as agreed upon by the parties

The Department may establish other payment methods for its share of the Project Costs upon written request from the Grantee.

(2) **Payments.** The Department shall, subject to funds being appropriated by the North Carolina General Assembly, pay the State share of the Project Costs quarterly and in advance based upon the anticipated expenditures for each quarter as submitted by Grantee. The Department will wire transfer the State share of the anticipated quarterly expenditures to the Grantee within five (5) business days of receipt of the quarterly anticipated expenditures from the Grantee. The Grantee shall submit anticipated quarterly expenditures to the Department in a timely manner, in such form as agreed upon by the parties. At the end of each quarter, the Grantee shall reconcile the State share of a quarter's Project Costs versus the amount of State share required for the Actual Project Costs paid in the quarter. This information will be used to adjust payment of the State share for future quarter's anticipated expenditures to ensure that payments for the State share consistently are adjusted to match the State share for Actual Project Costs

expended. The parties shall also account for and reconcile such advances in accordance with the audit provisions of the Grant Contracts referenced in Article 28.

The Department may establish other payment and accounting methods for its share of the Project Costs as may be agreed upon by the parties.

(3) Interest Account. The Grantee shall deposit funds received from the Department in an interest-bearing account. Interest earned by the Grantee on such State funds will be included as part of the Department contribution. The Grantee agrees to pay the Department interest on any State funds the Grantee has drawn down and failed to spend for Project activities.

(4) Funding Limitations. The Department's Project Costs responsibilities shall be subject to appropriations by the General Assembly and cash availability from the Department. The Department shall make reasonable efforts to secure such appropriations to fund multi-year grants to the Project in an amount not less than \$267,222,000 (Two Hundred Sixty-Seven Million, Two Hundred Twenty-Two Thousand Dollars), which shall provide for one-half (1/2) of the non-Federal share of the Estimated Project Cost (expected to be twenty-five percent (25%) of the Estimated Project Cost) established at the FTA issuance of a Record of Decision for the Project. The amount may be amended subsequently as described in Article 9, "Maximum State Financial Contribution and Limitations." However, for costs identified after the BCE is established, the Department's share of these Project Costs will be determined using the guidelines set forth in Attachment 7, State Share of Federal New Starts Project Costs. The Department shall not be liable for any cost incurred for Project Costs unless the Department has given notice to the Grantee that adequate State funds have been appropriated for the Project. Cost overruns shall be addressed in the manner set forth in Attachment 7.

(C) Project Budget and Schedule

(1) Final Budget Responsibilities. The Grantee shall be responsible for developing the overall final Project Budget – Costs and Sources of Funding, as amended from time to time, and approved by the Department. The initial Project Budget – Costs and Sources of Funding shall be submitted to the Department in the Grantee's Application at the FTA issuance of a Record of Decision for the Project. The Grantee shall notify the Department of any anticipated cost overruns as soon as practical.

(2) Project Schedule. The Grantee shall be responsible for developing the Baseline Schedule as required for the execution of the Federal FFGA. The Baseline Schedule shall be submitted to the Department as part of the Application.

**Article 14 Obligation to Complete the Project**

If the total State financial assistance provided under Article 9 is insufficient to achieve revenue operation of the Project and the subsequent activities necessary to Complete the Project, the Grantee agrees to Complete the Project and accepts sole responsibility for the payment of any additional costs (overruns), unless State participation is agreed to in the manner set forth in Attachment 7. The Grantee further agrees to notify the Department of any significant concerns expressed by FTA regarding Project Costs, schedule and the ability to operate the Project, or when the total Project Costs are expected to exceed the funds available and identify the source of funds to cover any shortfall.

**Article 15 Revenue Operation Date**

(A) The Grantee agrees to use its best efforts to achieve revenue operation of the Project on or before December 31, 2017 (Revenue Operation Date) in accordance with the terms and conditions of this Agreement and consistent with the Federal Full Funding Grant Agreement.

(B) The Revenue Operation Date is a significant term of this Agreement. The Grantee's failure to achieve the operational functions of the Project on or before the Revenue Operation Date will constitute a breach of this Agreement. Upon the Grantee's request, the Department shall waive a breach, or an anticipatory breach, and to extend the Revenue Operation Date if there is an unavoidable delay in achieving the operational goals of the Project resulting from an event or circumstance beyond the control of the Grantee or if the Department determines that allowing the delay is in the best interest of the Department and the success of the Project. Requests by the Grantee for waiver of a breach or anticipatory breach and extension of the Revenue Operation Date for the reasons set forth herein shall be submitted promptly (with appropriate documentation) to the Department.

(C) Delays in appropriations of funds from the United States Congress or from the North Carolina General Assembly may constitute a basis for extension of the Revenue Operation Date.

(D) Extensions of the Revenue Operation Date by the FTA shall constitute a basis for extension of this Agreement.

(E) The Department's consent to extend the Revenue Operation Date pursuant to paragraph (B) of this Article does not constitute a basis for additional State financial assistance beyond the Maximum State Financial Contribution.

#### **Article 16 Authorization to Advance Project Without Prejudice**

The Grantee may incur costs or expend local funds for those phases of the Project for which the Department will share costs as shown on Attachment 7 (to the extent the incurring of such costs are agreed by Grantee and the Department to be reasonably necessary to advance the Project) prior to an award of State funding assistance without prejudice to possible future State participation in or reimbursement of the Project Costs to the extent that such costs are incurred in accordance with all applicable State requirements, this Agreement and all Federal requirements for the expenditure of funds for the Project. It is understood that the authority conferred on the Grantee to advance the Project without prejudice does not constitute a legal commitment by the Department to obligate and award State funds.

#### **Article 17 Environmental Protection**

(A) As a condition precedent to this Agreement, the environmental impacts of the Project have been assessed as required by law. The results of that assessment and the adopted mitigation measures are described in the FEIS and the FTA Record of Decision. These documents together with related agreements and supporting documentation are hereby incorporated and made a part of this Agreement.

(B) The Grantee is required, among other actions, to undertake all environmental mitigation measures that are identified in environmental documents prepared for the Project. Accordingly, the Grantee understands that it shall not withdraw or substantially change any of the adopted mitigation measures as described in the FEIS and the FTA Record of Decision without the express written approval of the Department and the FTA.

#### **Article 18 Compliance with Federal, State & Local Law**



The Grantee will comply with all Federal, State, and local laws and regulations applicable to its ability to undertake the Project and to observe, assume, or carry out any of the provisions of this Agreement.

#### **Article 19      Federal FFGA Compliance Condition of Department Obligations**

The parties acknowledge the Federal FFGA shall provide remedies for the FTA in the event of a default by Grantee. In the event the FTA determines that there has been a default by Grantee and suspends or terminates its financial participation under the Federal FFGA, the Department may take similar action, consistent with the Federal action, under this Agreement and suspend or terminate its financial participation. Suspension or termination of any part of the financial assistance will not invalidate obligations properly incurred by Grantee prior to the date of suspension or termination to the extent they are non-cancelable. This latter provision is to recognize that the Department is responsible for its share of cost liabilities of the Project that have been incurred by Grantee, including, but not limited to, Project and consultant/contractor contract close-out costs, and any costs to finish or close out prior Project work undertaken in accordance with the SFFGA, as it may be amended and supplemented by subsequent agreements.

#### **Article 20      State Financial Participation Contingent Upon Federal Financial Assistance**

It is understood by Grantee that the obligations of the Department to financially participate in the Project is contingent upon Grantee receiving Federal approvals to advance the Project, including a Record of Decision, which provides pre-award authority to proceed with right-of-way and property acquisition, approval to enter final design, a letter of no prejudice or pre-award authority for financing other portions of the Project in advance of a Federal FFGA, and a Federal FFGA.

#### **Article 21      Department Actions**

(A) In all cases where the Department's review, approval or concurrence is required under the terms and conditions of this Agreement, the Department will, if possible, provide its response within sixty (60) Days of receipt from the Grantee of all materials reasonably necessary for the formulation of the Department's response.

(B) If the Department determines that its position cannot be finalized within the sixty (60) Day period, the Department will notify the Grantee, in writing, within thirty (30) Days of receipt of the Grantee's submission that the Department's response will be delayed and advise the Grantee of the Department's anticipated time period for response. The parties will mutually agree to any time period necessary for the aforementioned response.

(C) Whenever Department approval or concurrence is needed on any matter under this Agreement, such approval or concurrence will not be unreasonably withheld.

#### **Article 22      Remedies**

(A) Default: Both parties to this Agreement shall have all remedies at law and equity, including the right to specific performance, and the rights of termination or suspension, in the event of a breach of this Agreement by either party that is not timely cured if such breach is capable of cure. A party shall have up to 90 days to complete an acceptable plan to cure a condition of breach after notice of such condition before that party shall be considered to be in default.

(B) Substantial failure of the Grantee to complete the Project in accordance with the Application and this Agreement will be a default of this Agreement. Substantial failure, for the purposes of this Article, shall mean a failure, which cannot be corrected within a reasonable time at a reasonable cost, as determined by the Department. In the event of default, the Department will have all remedies at law and equity, including the rights of termination or suspension. The Grantee recognizes that in the event of default, the Department may (subject to the provisions of Article 19) demand all State funds provided to the Grantee for the Project be returned to the Department; provided however the Department is responsible for its share of cost liabilities of the Project that have been incurred by the Grantee, including, but not limited to, Project and consultant/contractor contract close-out costs, and any costs to finish or close out Project work undertaken in accordance with the SFFGA, as it may be amended and supplemented by subsequent agreements, subject to the provisions of Article 19. Furthermore, a default of this Agreement will be a factor considered before a decision is made with respect to the approval of future related Grants requested by the Grantee.

(C) Under the provisions of Article 23 of this Agreement, "Project Management Oversight and Performance Review," the Department will review performance by the Grantee to determine whether satisfactory progress is being made to Complete the Project. In the event that the Department determines that the Grantee is in breach of this Agreement, the Department may withhold its approvals of further funding and suspend draw down of funds, until any necessary corrective action, which may be required by the Department, is accomplished. Any breach of this Agreement which is not corrected within a reasonable period of time will be a default of this Agreement. The Department in its discretion may permit the cost of such corrective action to be deemed a Project Cost, and so long as it remains within the limits of the Maximum State Financial Contribution set forth in Article 9 of this Agreement, "Maximum State Financial Contribution and Limitations."

(D) In the event of a breach of this Agreement by the Grantee and before the Department takes action contemplated by this Article, the Department will, to the extent possible, provide the Grantee with reasonable written notice that the Department considers that such breach has occurred and will provide the Grantee a reasonable period of time to respond and to take necessary corrective action.

## **Article 23 Project Management Oversight & Performance Review**

(A) Management Oversight. The Project is a "Major Capital Project" as defined at 49 C.F.R. 633.5. In order to be eligible for Federal New Starts funds for this Project, which are budgeted to be the largest funding source for the Project, the Grantee shall meet all the applicable requirements and conditions of 49 C.F.R. Part 633. Accordingly, the Grantee agrees that all of the applicable requirements and conditions set forth at 49 C.F.R. Part 633 apply to the Project activities. Noncompliance with the regulatory requirements shall constitute a breach of this Agreement.

(B) Performance Review. The Department will review performance by the Grantee to determine whether satisfactory progress is being made to complete the Project. As part of Grantee's obligations under the Federal Government's Project Management regulations, the Grantee will maintain complete performance records which accurately reflect Project Work associated with the BLE and make copies of such records available to the Department.

## **Article 24 Contents of Agreement**

This Agreement consists of Articles 1 through 32 and Attachments 1 through 7, the SFFGA, the Application, the FEIS and related agreements. Should the State assistance award letters for Grant Contracts for this Project include special conditions for the Project, those letters are incorporated herein by reference and made a part of this Agreement. Any inconsistency between the Application and the

terms and conditions of this Agreement will be resolved according to the clear meaning of the provisions of this Agreement and Attachments hereto.

## **Article 25      Term**

The term of this Agreement shall begin on the date of the execution of this Agreement and shall terminate when the Project work is completed as evidenced by the date the BLE is put into revenue service and the Federal FFGA for the Project is closed.

## **Article 26      Certification of Grantee**

The Grantee makes the following representations as of the Date of this Agreement as a basis for the undertakings on the part of the Department:

- (A) Grantee has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;
- (B) Grantee by proper corporate action (Charlotte City Council Resolution Book 42, Page 955, dated April 25, 2011) has duly authorized the execution and delivery of this Agreement;
- (C) When executed and delivered by the Department and Grantee, this Agreement will constitute the legal, valid and binding obligation of Grantee enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally; and
- (D) No director, officer, or employee of Grantee, who exercises or has exercised any functions or responsibilities over the Agreement shall have or obtain a personal or financial interest or benefit from any activity in connection with the Agreement or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.

## **Article 27      Certification of the Department**

The Department makes the following representations as of the date of the execution of this Agreement as a basis for the undertakings on the part of Grantee:

- (A) The Department has all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;
- (B) The North Carolina Board of Transportation has duly authorized the execution and delivery of this Agreement;
- (C) When executed and delivered by the Department and by the Grantee, this Agreement will constitute the legal, valid and binding obligation of the Department enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally; and
- (D) No director, officer, or employee of the Department, who exercises or has exercised any functions or responsibilities over the Agreement shall have or obtain a personal or financial interest or benefit from any activity in connection with the Agreement or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.

## **Article 28 Provisions Pertaining to Grant Contracts**

Additional terms and conditions governing the award and use of the Maximum State Financial Contribution shall be described in amendments (referred to as Grant Contracts) to this Agreement. These terms and conditions will include, among other things, provisions for audits, quarterly prepayment of the State share, dispute resolution, insurance requirements of the Grantee and other such provisions as the Department may determine are necessary for appropriate monitoring, expenditure and use of State funds and other State resources provided to the Grantee pursuant to the State's obligations under this Agreement.

## **Article 29 Attachments – Incorporation**

Each and every Attachment to this Agreement is incorporated by reference and made a part of this Agreement.

## **Article 30 Notices**

### **(A) Written Notice**

All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or sent by a courier service or a national overnight delivery service, such as the U.S. Overnight Express Mail, to any party hereunder as follows:

If to the Department: Paul Morris  
Deputy Secretary for Transit  
North Carolina Department of Transportation  
1501 Mail Service Center  
Raleigh, North Carolina 27699-1501

If to the Grantee: Carolyn Flowers  
CATS Chief Executive Officer  
City of Charlotte  
600 E. Fourth Street  
Charlotte, North Carolina 28202-2858

With a second copy to: John Joye  
Senior Assistant City Attorney, CATS  
City of Charlotte  
600 E. Fourth Street  
Charlotte, North Carolina 28202-2858

## **Article 31 Applicable Law**

This Agreement will be governed, construed and interpreted in accordance with the laws of North Carolina.

## **Article 32 Execution of Agreement**

This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each deemed to be an original having identical legal effect. After review by the Joint Legislative Transportation Oversight Committee, this Agreement shall be executed by the Department, and by

Grantee within ninety (90) Days of the Department's execution. Upon execution, this Agreement will constitute an agreement by the Department to seek appropriations for the State financial contribution. The Department may withdraw its agreement to seek appropriations if this Agreement is not executed by Grantee within the ninety (90) Day period following Department's execution.

The Department has executed this Agreement as of \_\_\_\_\_ .

By: \_\_\_\_\_

Eugene R. Conti, Jr.  
Secretary  
North Carolina Department of Transportation

The Grantee, by execution of this Agreement, ratifies and adopts all statements, representation, warranties, covenants and materials submitted by it; accepts the Department's award of financial assistance; and agrees to all of the terms and conditions of this Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Organization: City of Charlotte

Authorized Officials: \_\_\_\_\_

W. Curtis Walton, Jr.  
City Manager  
City of Charlotte

### **Certification By Attorney**

I, \_\_\_\_\_, City Attorney for the City of Charlotte, certify that I have examined this Agreement and the proceedings taken by the City of Charlotte relating to it. As a result of this examination I find that the execution of the Agreement by the City of Charlotte has been duly authorized by the City of Charlotte's action, in the form of a resolution, dated \_\_\_\_\_ (a copy of which is certified as true and conforming and is submitted to the Department along with this executed Agreement). Also, I find that in all respects the execution of this Agreement and of the authorizing resolution are due and proper and in accordance with applicable State and local law. Further, in my opinion, this Agreement constitutes a legal and binding obligation of the City of Charlotte in accordance with the Agreement terms. Finally, I certify that to the best of my knowledge there is no legislation or litigation pending or threatened which might affect the full implementation of the Project in accordance with the terms of this Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE: \_\_\_\_\_

City Attorney  
City of Charlotte